Remarks

The Office Action dated August 9, 2005 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-20 stand rejected.

The objection of Claims 2-7 over alleged omission of a verb is respectfully traversed rejection of Claim 9 under 35 U.S.C. § 112, second paragraph, is respectfully traversed. Applicant has amended Claims 2-7 to add the verb "is" as suggested in the Office Action. For at least the reasons set forth above, Applicant respectfully requests that the objection of Claims 2-7 be withdrawn.

The rejection of Claims 9-20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is respectfully traversed.

The Office Action asserts at page 2 that Claims 9-20 are rejected "because the claimed invention is directed to non-statutory subject matter." Applicants respectfully traverse this assertion. However, Applicant has amended independent Claims 9 and 15 to address the rejection set forth in the Office Action.

More specifically, Applicant submit that the claims of the present patent application are directed to practical applications in the technological arts. "Any sequence of operational steps can constitute a process within the meaning of the Patent Act so long as it is part of the technological arts." In re Musgrave, 431 F.2d 882 (C.C.P.A. 1970). For example, independent Claim 9 recites "[a] method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server" and the method includes "displaying the results to the user via the device." Applicant submits that a method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server is a useful process that is considered to be within "the technological arts".

Claim 9 has been amended. Claim 9 recites a method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server wherein the method includes "determining evaluation area categories based on an evaluation of the production performance capabilities of at least one of

the process and the part being evaluated...receiving, using a computer, information relevant to the capabilities of the production process within the evaluation categories...compiling the received information...comparing the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...displaying the results to the user via the device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function." Thus, Applicants submit that Claim 9 is directed to a useful process that is considered to be within "the technological arts".

Dependent Claims 10-14 depend from independent Claim 9, and these dependent Claims are submitted to satisfy the requirements of Section 101 for the same reasons set forth above with respect to independent Claim 9.

In addition, Claim 15 recites a method for evaluating performance of a production process using a network connecting a plurality of users, the network including a server and a plurality of user display devices wherein the method includes "receiving, from the users using a computer, information concerning evaluation categories relevant to the production process...assigning each evaluation category at least one weighted factor that normalizes the received information with respect to its relative contribution to a process capability improvement...compiling the information received from the users with the server...evaluating the received information in the form of answers to respective questions, in comparison to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...displaying the results to the users wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function." Claim 15 is therefore directed to a practical application in the technological arts.

Dependent Claims 16-20 depend from independent Claim 15, and these dependent Claims are submitted to satisfy the requirements of Section 101 for the same reasons set forth above with respect to independent Claim 15.

For at least the reasons set forth above, Applicant respectfully requests that the Section 101 rejection of Claims 9-20 be withdrawn.

The rejection of Claims 1-4, 6-10, 12-18 and 20 under 35 U.S.C. § 102(e) as being anticipated by Powers et al. (U.S. Patent No. 6,604,084) ("Powers") is respectfully traversed.

Claim 1 recites a system for evaluating process performance including "a device...a server connected to said device and configured to receive process production capability information data using a computer, from a user via said device, said server further configured to...compile the received information...display to the user information related to the production process...compare the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...display the results of the compared information to the user via said device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 1. Specifically Powers does not describe nor suggest a server configured to compare received information in the form of answers to respective questions, to reference information in the form of answers to the questions developed to encompass an expected range of answers from the users responding to the questions. Moreover, Powers does not describe nor suggest a server configured to display the results of the compared information to the user via the device wherein the results include a numerical score that represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for at least the reasons stated above, Applicants respectfully submit that Claim 1 is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claim 1 be withdrawn.

Claims 2-4 and 6-8 depend from independent Claim 1 which is submitted to be in condition for allowance. When the recitations of Claims 2-4 and 6-8 are considered in

combination with the recitations of Claim 1, Applicant submits that dependent Claims 2-4 and 6-8 are also patentable over Powers.

Claim 9 recites a method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server wherein the method includes "determining evaluation area categories based on an evaluation of the production performance capabilities of at least one of the process and the part being evaluated...receiving, using a computer, information relevant to the capabilities of the production process within the evaluation categories...compiling the received information...comparing the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...displaying the results to the user via the device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 9. Specifically Powers does not describe nor suggest determining evaluation area categories based on an evaluation of the production performance capabilities of at least one of the process and the part being evaluated. Moreover, Powers does not describe nor suggest receiving, using a computer, information relevant to the capabilities of the production process within the evaluation categories. Further Powers does not describe nor suggest comparing the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions and displaying the results to the user via the device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for at least the reasons stated above, Applicants respectfully submit that Claim 9 is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claim 9 be withdrawn.

Claims 10 and 12-14 depend from independent Claim 9 which is submitted to be in condition for allowance. When the recitations of Claims 10 and 12-14 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claims 10 and 12-14 are also patentable over Powers.

Claim 15 recites a method for evaluating performance of a production process using a network connecting a plurality of users, the network including a server and a plurality of user display devices wherein the method includes "receiving, from the users using a computer, information concerning evaluation categories relevant to the production process...assigning each evaluation category at least one weighted factor that normalizes the received information with respect to its relative contribution to a process capability improvement...compiling the information received from the users with the server...evaluating the received information in the form of answers to respective questions, in comparison to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...displaying the results to the users wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 15. Specifically Powers does not describe nor suggest receiving information concerning evaluation categories relevant to the production process and assigning each evaluation category at least one weighted factor that normalizes the received information with respect to its relative contribution to a process capability improvement. Moreover, Powers does not describe nor suggest evaluating the received information in the form of answers to respective questions, in comparison to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions and displaying the results to the users wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of

questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for at least the reasons stated above, Applicants respectfully submit that Claim 15 is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claim 15 be withdrawn.

Claims 16-18 and 20 depend from independent Claim 15 which is submitted to be in condition for allowance. When the recitations of Claims 16-18 and 20 are considered in combination with the recitations of Claim 15, Applicant submits that dependent Claims 16-18 and 20 are also patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claims 1-4, 6-10, 12-18, and 20 be withdrawn.

The rejection of Claims 5, 11, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Powers et al. (U.S. Patent No. 6,604,084) "Powers", is respectfully traversed.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been an obvious to one of ordinary skill in the art to modify Powers as suggested in the office action, with respect to either its structure or material. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art, and not in the applicant's disclosure. As explained by the Federal Circuit, "the test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000), M.P.E.P. 2143. Moreover, the Federal Circuit has determined that:

> [i]t is impermissible to use the claimed invention as an
> instruction manual or "template" to piece together the teachings
> of the prior art so that the claimed invention is rendered

11

> obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). In the present case, neither a suggestion nor motivation to modify the Powers system, nor any reasonable expectation of success has been shown.

Moreover, Applicants submit that it would not have been obvious modify Powers to obtain the claimed recitations. Obviousness cannot be established by merely suggesting that it would be obvious to one of ordinary skill in the art to have selected an alternative design choice. Rather, each allegation of what would have been an obvious matter of design choice must always be supported by citation to some reference work recognized as standard in the pertinent art, and the Applicants given an opportunity to challenge that correctness of the assertion or the repute of the cited reference. Applicants have not been provided with the citation to any reference supporting the combination made in the rejection.

Furthermore no modification of Powers describes or suggests a server configured to compare received information in the form of answers to respective questions, to reference information in the form of answers to the questions developed to encompass an expected range of answers from the users responding to the questions and to display the results of the compared information to the user via the device wherein the results include a numerical score that represents a relative capability of the process being evaluated to perform a desired manufacturing function as is recited in the Claims. Specifically, Claim 5 depends from independent Claim 1 which recites a system for evaluating process performance including "a device...a server connected to said device and configured to receive process production capability information data using a computer, from a user via said device, said server further configured to...compile the received information...display to the user information related to the production process...compare the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...display the results of the compared information to the user via said device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 1. Specifically Powers does not describe nor suggest a server configured to compare received information in the form of answers to respective questions, to reference information in the form of answers to the questions developed to encompass an expected range of answers from the users responding to the questions. Moreover, Powers does not describe nor suggest a server configured to display the results of the compared information to the user via the device wherein the results include a numerical score that represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for the reasons set forth above, Claim 1 is submitted to be patentable over Powers.

Claim 5 depends from independent Claim 1. When the recitations of Claim 5 are considered in combination with the recitations of Claim 1, Applicants submit that Claim 5 likewise is patentable over Powers.

Claim 9 recites a method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server wherein the method includes "determining evaluation area categories based on an evaluation of the production performance capabilities of at least one of the process and the part being evaluated...receiving, using a computer, information relevant to the capabilities of the production process within the evaluation categories...compiling the received information...comparing the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions...displaying the results to the user via the device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 9. Specifically Powers does not describe nor suggest

determining evaluation area categories based on an evaluation of the production performance capabilities of at least one of the process and the part being evaluated. Moreover, Powers does not describe nor suggest receiving, using a computer, information relevant to the capabilities of the production process within the evaluation categories. Further Powers does not describe nor suggest comparing the received information in the form of answers to respective questions, to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions and displaying the results to the user via the device wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for at least the reasons stated above, Applicants respectfully submit that Claim 9 is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claim 9 be withdrawn.

Claim 11 depends from independent Claim 9 which is submitted to be in condition for allowance. When the recitations of Claim 11 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claim 11 likewise is patentable over Powers.

Claim 15 recites a method for evaluating performance of a production process using a network connecting a plurality of users, the network including a server and a plurality of user display devices wherein the method includes "receiving, from the users using a computer, information concerning evaluation categories relevant to the production process...assigning each evaluation category at least one weighted factor that normalizes the received information with respect to its relative contribution to a process capability improvement...compiling the information received from the users with the server...evaluating the received information in the form of answers to respective questions, in comparison to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the

14

questions…displaying the results to the users wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function."

Powers does not describe nor suggest a method for evaluating performance of a production process as recited in Claim 15. Specifically Powers does not describe nor suggest receiving information concerning evaluation categories relevant to the production process and assigning each evaluation category at least one weighted factor that normalizes the received information with respect to its relative contribution to a process capability improvement. Moreover, Powers does not describe nor suggest evaluating the received information in the form of answers to respective questions, in comparison to reference information in the form of answers to questions developed to encompass an expected range of answers from the users responding to the questions and displaying the results to the users wherein the results include a numerical score represents a relative capability of the process being evaluated to perform a desired manufacturing function. Rather, in contrast to the present invention, Powers describes an employee evaluation system using performance areas that is a grouping of questions that relates to a particular area of job performance and that an evaluation of the employee's job performance is automatically generated based on guidelines, performance areas and questions selected for the evaluation. Accordingly, for at least the reasons stated above, Applicants respectfully submit that Claim 15 is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 102(e) rejection of Claim 15 be withdrawn.

Claim 19 depend from independent Claim 15 which is submitted to be in condition for allowance. When the recitations of Claim 19 are considered in combination with the recitations of Claim 15, Applicant submits that dependent Claim 19 likewise is patentable over Powers.

For at least the reasons as set forth above, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of Claims 5, 11, and 19 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

William J. Zychlewicz
Registration No. 51,366
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070